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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/618,881  | 07/11/2003  | Chih-Wei Chen        | LA-7196-119XX       | 6814             |
| 167   | 7590        | 03/17/2006           | EXAMINER            |                  |
| FULBRIGHT AND JAWORSKI LLP<br>555 S. FLOWER STREET, 41ST FLOOR<br>LOS ANGELES, CA 90071 |             |                      | WANG, ALBERT C      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2115                |                  |

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                |
|------------------------------|-----------------|----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)   |
|                              | 10/618,881      | CHEN, CHIH-WEI |
|                              | Examiner        | Art Unit       |
|                              | Albert Wang     | 2115           |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

1. Original claims 1-10 are pending.

### *Claim Objections*

2. Claims 9 and 10 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 5 and 7. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.

See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5-7, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "of claim 5" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claims 6, 7, 9 and 10 depend on claim 5.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Peters et al., U.S. Patent No. 6,920,555 (“Peters”).

As per claim 1, Peters teaches a computer code upgrading method for use with a memory module for upgrading a set of embedded computer code and its related settings data in the memory module; the computer code upgrade method comprising:

duplicating a copy of the settings data (fig. 2, step 208);

erasing all the computer code and settings data in the memory module (col. 8, lines 4-21, erasing all is inherent for case of deploying new operating system, e.g. see fig. 5, step 504 of Sardesai et al., U.S. Patent Pub. No. 2004/0187104);

writing a new version of computer code into the memory module (step 210); and

writing the duplicated copy of settings data into the memory module (step 212).

As per claim 2, Peters teaches the memory module is a server's internal erasable programmable memory module (col. 4, lines 18-26 & 53-56).

As per claim 3, Peters teaches the computer code stored in the memory module is an embedded operating system (col. 4, lines 18-26).

As per claim 4, Peters teaches a computer code upgrading system for use with a memory module for upgrading a set of embedded computer code and its related settings data in the memory module; the computer code upgrade system comprising:

a first storage module for storing a new version of computer code (fig. 6, partition 600);

a second storage module for storing a duplicated copy of the old settings data in the memory module (fig. 6, partition 604);

a settings data duplicating module for duplicating a copy of the old settings data in the memory module and storing the duplicated copy of old settings data in the second storage module (col. 8, lines 35-54); and

a programming module, which is capable of erasing all the computer code and settings data in the memory module, and then writing the new version of computer code stored in the first storage module as well as the duplicated copy of settings data stored in the second storage module into the memory module (fig. 1, processor 110; col. 8, lines 4-21 & 35-54, erasing all is inherent for case of deploying new operating system, e.g. see fig. 5, step 504 of Sardesai et al., U.S. Patent Pub. No. 2004/0187104).

As per claim 5, Peters teaches the memory module is a server's internal erasable programmable memory module (col. 4, lines 18-26 & 53-56).

As per claim 6, Peters teaches the computer code stored in the memory module is an embedded operating system (col. 4, lines 18-26).

As per claim 7, Peters teaches the second storage system is a RAM module (col. 4, lines 35-56).

As per claim 8, Peters teaches a computer code upgrading system for use with a memory module for upgrading an embedded operating system and its related settings data in the memory module; the computer code upgrade system comprising:

a first storage module for storing a new version of embedded operating system (fig. 6, partition 600; col. 4, lines 18-26; col. 8, lines 4-21);

a second storage module for storing a duplicated copy of the old settings data in the memory module (fig. 6, partition 604);

a settings data duplicating module for duplicating a copy of the old settings data in the memory module and storing the duplicated copy of old settings data in the second storage module (col. 8, lines 35-54); and

a programming module, which is capable of erasing the old version of embedded operating system and settings data in the memory module, and then writing the new version of embedded operating system stored in the first storage module as well as the duplicated copy of settings data stored in the second storage module into the memory module (fig. 1, processor 110; col. 8, lines 4-21 & 35-54, erasing all is inherent for case of deploying new operating system, e.g. see fig. 5, step 504 of Sardesai et al., U.S. Patent Pub. No. 2004/0187104).

As per claim 9, Peters teaches the memory module is a server's internal erasable programmable memory module (col. 4, lines 18-26 & 53-55).

As per claim 10, Peters teaches the second storage system is a RAM module (col. 4, lines 35-56).

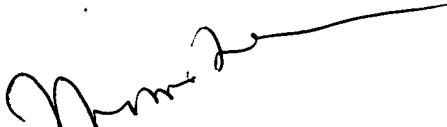
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert Wang whose telephone number is 571-272-3669. The examiner can normally be reached on M-F (9:30 - 6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on 571-272-3667. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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